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FEB 13 2009

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST
GOLF LLC AGAINST JOHNSON
UTILITIES LLC.

DOCKET NO. WS-02987A-08-0049

JOHNSON UTILITIES LLC'S
RESPONSE TO SWING FIRST
GOLF LLC'S MOTION TO
COMPEL AND CROSS MOTION TO
COMPEL DISCOVERY RESPONSES

Snell & Wilmer

LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

On February 6, 2009, 2008, Swing First Golf, LLC ("SFG") filed with the Arizona Corporation Commission ("Commission") a Motion to Compel ("Motion") against Johnson Utilities LLC ("Johnson Utilities" or the "Company") in the above-captioned matter. Although the Motion purports to compel discovery allegedly necessary for SFG to prepare its case against Johnson Utilities, SFG's inflammatory and inappropriate commentary throughout its Motion is an abuse of the Commission's discovery process. Johnson Utilities has raised valid objections to SFG's discovery requests that should be sustained. Accordingly, SFG's Motion should be denied.

On October 22, 2008, Johnson Utilities propounded its Second Set of Data Requests to SFG in this docket. On October 30, 2008, SFG objected to certain of the data requests. As the parties have been unable to resolve this matter, Johnson Utilities is requesting that SFG be ordered to provide responses to the Company's data requests as set forth below.

1 **I. JOHNSON UTILITIES' RESPONSE TO SFG'S MOTION TO COMPEL.**

2 **A. INTRODUCTION.**

3 We note at the outset that, while having nothing to do with whether Johnson
4 Utilities' objections to 6 of the 38 SFG data requests are proper, SFG uses its Motion as
5 yet another opportunity to disparage and bash the Company. As a few examples of this,
6 SFG accuses Johnson Utilities of "continu[ing] to flout the Commission's discovery
7 rules," of using "stonewalling" tactics, of "illegal activities," and of "trying to hide
8 incriminating evidence."¹ But the most ridiculous statement in the Motion comes in
9 regard to a motion to compel discovery that SFG filed in Johnson Utilities' rate case²
10 wherein SFG stated that "[o]n January 28, 2009, Judge Wolfe ruled from the bench and
11 ordered Utility to provide much of the information requested by Swing First." (emphasis
12 added)³ This is a clear mischaracterization of Judge Wolfe's ruling. Of the 15
13 objections raised by Johnson Utilities to SFG data requests, Judge Wolfe ruled in SFG's
14 favor on only two, and partially ruled in SFG's favor on only two others.⁴ On 9 of the 15
15 objections, Judge Wolfe ruled in Johnson Utilities' favor, and the Company was not
16 required to provide the requested discovery. This is hardly "much of the information
17 requested by Swing First." To the contrary, it demonstrates that Johnson Utilities only
18 files objections where it has a good faith basis for such objections, as it has done in this
19 case.

20 Moreover, it should also be noted that—like the instant Motion—SFG spent the
21 first nine pages of its motion to compel in the Johnson Utilities rate case disparaging and
22 bashing the Company. At the January 28, 2009, oral argument on that rate case motion,
23 Judge Wolfe stated: "We are not going to consider any of that today. We are going to

24 ¹ Motion at page 1, lines 4-5, and page 2, lines 2 and 21.

25 ² Docket No. WS-02987A-08-0180.

26 ³ Motion at page 2, lines 3-6.

⁴ SFG was required to send revised data requests on two others.

1 start on page 10.”⁵ SFG's poisonous attacks on Johnson Utilities and George Johnson
2 should likewise be discarded in this case, and SFG should be admonished to desist from
3 filing additional pleadings as a vehicle to make character attacks on Johnson Utilities
4 and George Johnson.

5 **B. JOHNSON UTILITIES' OBJECTIONS ARE VALID AND SHOULD**
6 **BE SUSTAINED.**

7 **1. General Comments Applicable to all Objections.**

8 SFG states that the purpose of the six data requests which are the subject
9 of the Motion relate to SFG's efforts to obtain information concerning the Commission's
10 jurisdiction over what SFG characterizes as a “three-way transaction” between Johnson
11 Utilities, the Golf Club at Oasis ("Oasis"), and SFG. Although the Company discusses
12 each of the data requests and corresponding objections below, it should be noted at the
13 outset that the data requests are irrelevant to the claims for relief set forth in SFG's
14 complaint in this docket ("Complaint"), and will not lead to the discovery of relevant
15 evidence.

16 In Arizona, relevant evidence is defined as “evidence having any tendency to
17 make the existence of any fact that is of consequence to the determination of the action
18 more probable or less probable than it would be without the evidence.” *See* Rule 401,
19 ARIZONA RULES OF EVIDENCE. Evidence which is not relevant is not admissible and
20 should not be considered in a judicial or quasi-judicial proceeding. *See* Rule 402,
21 ARIZONA RULES OF EVIDENCE.

22 SFG has filed a Complaint against Johnson Utilities, a public service corporation
23 subject to the jurisdiction of the Commission. *See Ariz. Const. Art. XV, §2.* The
24 Commission does not regulate and does not have jurisdiction over entities that do not fall
25 within the constitutional definition of a public service corporation. As more fully

26 ⁵ Transcript of Proceedings at page 10, lines 23-24 (Docket WS-02987A-09-0180).

1 addressed in the Company's December 4, 2008, Motion for Summary Judgment pending
2 before the Administrative Law Judge in this matter, SFG's claim that it is owed a water
3 credit of \$50,056.50 for golf course management services that SFG allegedly provided to
4 Oasis clearly falls outside of the Commission's jurisdiction. Neither SFG nor Oasis are
5 public services corporations, and the Commission lacks jurisdiction over both parties.
6 Likewise, the Commission lacks jurisdiction over the alleged agreement regarding golf
7 course management services between SFG and Oasis. The only evidence of the alleged
8 agreement between SFG and Oasis is a two-page unsigned "Letter of Understanding"
9 which makes no mention of Johnson Utilities.⁶ Thus, data requests pertaining to Oasis,
10 the alleged golf course management agreement, or services provided by Mr. Tompsett
11 for Oasis or any entity controlled by George Johnson are irrelevant. What is relevant is
12 whether SFG was correctly billed for the actual quantities of effluent and Central
13 Arizona Project ("CAP") water delivered by Johnson Utilities, including applicable
14 meter charges, Water Quality Assurance Revolving Fund ("WQARF") taxes, and
15 transaction privilege taxes. Johnson Utilities has fully responded to those SFG data
16 requests that address these issues.

17 Whether SFG and Oasis had a valid agreement for management of the Oasis golf
18 course, the terms and conditions of that agreement, whether there has been a breach of
19 that agreement, and whether SFG is entitled to receive water from Oasis under the
20 agreement are all questions that must be resolved in the Superior Court.

21 **2. Johnson Utilities' Objections.**

22 Johnson Utilities will now discuss each of its six objections to SFG's
23 second set of data requests, which are repeated below for convenience.

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25
26 ⁶ The unsigned Letter of Understanding states that in exchange for services, Oasis will provide SFG with 150,000,000 gallons of water per year.

1 33. *Does Mr. Tompsett perform services for other entities controlled by*
2 *George Johnson?*

3 a. *If the answer to Question 30 [sic] is "yes", please identify all*
4 *such services performed.*

5 b. *If the answer to Question 30 [sic] is "yes", does Utility bill*
6 *the other entity for his services?*

7 Johnson Utilities objected to Data Request 33 on the grounds that: (i) it is not
8 relevant to a resolution of issues properly before the Commission; (ii) it will not lead to
9 the discovery of admissible evidence; (iii) the "other entities" referenced in the data
10 request are not subject to Commission jurisdiction; and (iv) it is vague and ambiguous.
11 In its Complaint, SFG alleges that it had a management agreement to manage the Golf
12 Club at Oasis, an entity owned by Johnson International. SFG further alleged that in
13 exchange for its golf course management services, it was to receive a water credit of 150
14 million gallons per year from Johnson Utilities, that it initially received a credit, and that
15 the credit was subsequently reversed. With its Data Request 33, SFG is seeking
16 evidence that Mr. Tompsett performs services for other entities controlled by George
17 Johnson, including Oasis. SFG argues that if Mr. Tompsett performed services for Oasis
18 and other entities controlled by Mr. Johnson, that this would be evidence that Mr.
19 Johnson disregarded any "separation of the affiliates and is controlling Utility for the
20 benefit of his affiliate."⁷

21 However, whether Mr. Tompsett performs services for other entities controlled by
22 Mr. Johnson is wholly irrelevant to the resolution of any claim properly before the
23 Commission in this case. Johnson Utilities must provide water service to SFG in
24 accordance with approved tariffs and applicable orders of the Commission. There is
25 nothing in the Company's tariffs or any order of the Commission which would allow

26 ⁷ Motion at page 3, lines 22-25.

1 Johnson Utilities to provide a water credit to SFG in exchange for golf course
2 management services provided to Oasis. More importantly, the Commission would
3 never authorize Johnson Utilities to provide a water credit to SFG in exchange for golf
4 course management services allegedly provided by SFG to Oasis.⁸

5 Moreover, the Commission would not have jurisdiction over the alleged golf
6 course management agreement between SFG and Oasis, and the Commission does not
7 have jurisdiction over Oasis, Johnson International or any other non-regulated entity
8 controlled by Mr. Johnson. If SFG believes it is owed compensation for golf course
9 management services provided to Oasis, its proper course of action is to file a complaint
10 against Oasis for breach of contract in Superior Court. SFG cannot ask this Commission
11 to order Johnson Utilities to provide a water credit in exchange for golf course
12 management services that SFG allegedly provided to Oasis. The proper scope of this
13 proceeding is to determine whether or not SFG was correctly billed for the actual
14 quantities of effluent and CAP water delivered by Johnson Utilities, including applicable
15 meter charges, WQARF taxes and transaction privilege taxes. Whether Mr. Tompsett
16 performs services for other entities controlled by Mr. Johnson does not help with that
17 determination.

18 In addition, SFG acknowledges in its Complaint that it did not receive the water
19 credit it claims for golf course management services provided to Oasis, which directly
20 contradicts its claim in the Motion that Mr. Johnson "is controlling Utility for the benefit
21 of his affiliate."⁹ SFG's argument would be much more compelling if SFG actually
22 received the water credit it claims, which by its own admission, it did not. We note also,

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24

⁸ The unsigned Letter of Understanding states that in exchange for services, Oasis will provide SFG with
25 150,000,000 gallons of water per year. The unsigned Letter of Understanding does not mention a water
26 credit by Johnson Utilities, and in fact, does not even mention Johnson Utilities.

⁹ Motion at page 3, lines 22-25.

1 that SFG's Complaint does not allege any violation by Johnson Utilities of the
2 Commission's affiliated interest rules.

3 Lastly, the words "controlled by George Johnson" are vague and ambiguous. Mr.
4 Johnson is not a regulated utility nor is he subject to Commission jurisdiction.

5 34. *Please refer to the attached November 27, 2007, e-mail from Mr.*
6 *Tompsett to Mr. Ashton.*

- 7 a. *Who was Mr. Tompsett performing services for?*
8 b. *Does he work for that entity?*
9 c. *What entity incurred the expenses referenced in the e-mail?*
10 d. *What entity was to issue the \$23,000 check to Swing First for*
11 *the expenses referenced in the e-mail?*
12 e. *Please provide a copy of the referenced check.*
13 f. *Please admit or deny that Mr. Tompsett was asking Swing*
14 *First was to issue Utility a check for \$23,000 [sic].*
15 g. *Did Swing First issue the \$23,000 check to Utility?*
16 h. *Mr. Tompsett states: "Let me know and we can continue to*
17 *discuss the management numbers." To what was Mr.*
18 *Tompsett referring? Please explain in detail.*

19 Johnson Utilities objected to Data Request 34 on the grounds that: (i) it is not
20 relevant to a resolution of issues properly before the Commission; and (ii) it will not lead
21 to the discovery of admissible evidence. In responding to the Company's objection, SFG
22 repeated substantially the same argument it made regarding Data Request 34 above.
23 Accordingly, Johnson Utilities hereby incorporates by reference its explanation in
24 support of its objection as discussed under Data Request 33 above. Further, with respect
25 to the e-mail referenced in the data request, it is obvious that items such as "\$4,000 for
26 the greens mower," "\$8,000 for the liquor license" and "\$11,000 for labor and fuel" have
no bearing upon whether or not SFG was correctly billed by Johnson Utilities for the
actual quantities of effluent and CAP water delivered by the Company.

1 Without waiving its objection on the grounds of relevance, Johnson Utilities notes
2 that SFG has already received a copy of the check it is seeking in subparts (d) and (e),
3 which was attached as Exhibit A to Johnson Utilities' Motion for Summary Judgment.
4 The check in the amount of \$23,000 is drawn on the account of The Club at Oasis, LLC,
5 and is payable to Swing First Golf.

6 Subpart (f) is unintelligible.

7 Subpart (g) asks Johnson Utilities to state whether SFG issued a check to the
8 Company. Certainly, SFG knows whether or not it issued a check to Johnson Utilities,
9 and the question is an inappropriate data request.

10 35. *Please admit or deny that Swing First provided management*
11 *services for the Oasis Golf Course over the period My 1, 2006 to*
12 *October 3, 2006.*

13 Johnson Utilities objected to Data Request 35 on the grounds that: (i) it is not
14 relevant to a resolution of issues properly before the Commission; and (ii) it will not lead
15 to the discovery of admissible evidence. SFG states in its Motion that "[t]his data
16 request seeks Utility's confirmation that Swing First was hired to manage the Oasis Golf
17 Course."¹⁰ Whether or not SFG was hired to manage Oasis has no bearing upon whether
18 or not SFG was correctly billed by Johnson Utilities for the actual quantities of effluent
19 and CAP water delivered by the Company. It is pure nonsense to ask Johnson Utilities
20 to admit or deny that SFG was hired by Oasis, two entities that are not subject to
21 Commission jurisdiction. Oasis and SFG are not public service corporations, nor do
22 they provide utility service. Whether Oasis hired SFG is an issue to be addressed in a
23 proceeding before the Superior Court, not this Commission. Johnson Utilities further
24 incorporates by reference its explanation in support of its objection as discussed under
25 Data Request 33 above.

26 ¹⁰ *Id.* at page 5, lines 2-3.

1 36. *What entity owns and controls the Oasis Golf Course?*

2 Johnson Utilities objected to Data Request 36 on the grounds that: (i) it is not
3 relevant to a resolution of issues properly before the Commission; and (ii) it will not lead
4 to the discovery of admissible evidence. SFG states in its Motion that it is seeking to
5 establish that Oasis is a Johnson Utilities affiliate, with each affiliate under common
6 control by George Johnson. Whether or not Oasis is an affiliate of Johnson Utilities has
7 no bearing upon whether or not SFG was correctly billed by Johnson Utilities for the
8 actual quantities of effluent and CAP water delivered by the Company. Oasis is not a
9 public service corporation, does not provide utility service, and is not a party to this
10 Complaint. Johnson Utilities further incorporates by reference its explanation in support
11 of its objection as discussed under Data Request 33 above.

12 37. *Is the entity owning and controlling the Oasis Golf Course under the*
13 *ultimate control of George Johnson?*

14 Johnson Utilities objected to Data Request 37 on the grounds that: (i) it is not
15 relevant to a resolution of issues properly before the Commission; and (ii) it will not lead
16 to the discovery of admissible evidence. SFG states in its Motion that it is seeking to
17 establish that Oasis is a Johnson Utilities affiliate, with each affiliate under common
18 control by George Johnson. Whether or not Oasis is an affiliate of Johnson Utilities has
19 no bearing upon whether or not SFG was correctly billed by Johnson Utilities for the
20 actual quantities of effluent and CAP water delivered by the Company. Oasis is not a
21 public service corporation, does not provide utility service, and is not a party to this
22 Complaint. Johnson Utilities further incorporates by reference its explanation in support
23 of its objection as discussed under Data Request 33 above.

24 38. *Is Johnson International under the ultimate control of George*
25 *Johnson?*

26 Johnson Utilities objected to Data Request 38 on the grounds that: (i) it is not
relevant to a resolution of issues properly before the Commission; and (ii) it will not lead

1 to the discovery of admissible evidence. SFG states in its Motion that it is seeking to
2 establish that Oasis is a Johnson Utilities affiliate, with each affiliate under common
3 control by George Johnson. Whether Oasis or Johnson International (which is the
4 subject of the data request) are affiliates of Johnson Utilities has no bearing upon
5 whether SFG was correctly billed by Johnson Utilities for the actual quantities of
6 effluent and CAP water delivered by the Company. Johnson International is not a public
7 service corporation, does not provide utility service, and is not a party to this Complaint.
8 Johnson Utilities further incorporates its explanation in support of its objection as
9 discussed under Data Request 33 above.

10 **III. JOHNSON UTILITIES' CROSS MOTION TO COMPEL DISCOVERY.**

11 On October 22, 2008, Johnson Utilities propounded its Second Set of Data
12 Requests to SFG. On October 30, 2008, SFG objected to 12 of the data requests. This
13 Cross-Motion to Compel relates to two (2) of those objections, which are repeated
14 below.

15 *JU 2.9 With regard to the Agreement Regarding Utility Service dated*
16 *September 17, 1999 (the "Agreement"), please provide the*
following information:

- 17 (a) *the names and titles of those persons representing Johnson*
18 *Ranch Holdings, LLC, who were involved in the negotiation*
19 *of the assignment of the Agreement from Johnson Ranch*
20 *Holdings, LLC, to Swing First Golf, LLC*
- 21 (b) *the names and titles of those persons representing Swing First*
22 *Golf, LLC, who were involved in the negotiation of the*
23 *assignment of the Agreement from Johnson Ranch Holdings,*
24 *LLC, to Swing First Golf, LLC.*

25 SFG objected to this data request on the grounds that the "information is
26 confidential, proprietary and irrelevant." To the contrary, the information requested is
clearly relevant. SFG has alleged in its Complaint that the September 17, 1999,

1 Agreement Regarding Utility Service ("Agreement") requires Johnson Utilities to charge
2 SFG \$0.62 per thousand gallons for all water delivered, regardless of whether that water
3 is effluent, CAP water or groundwater. Johnson Utilities refutes this reading of the
4 Agreement, and submits that the language of the Agreement plainly states otherwise. If
5 the Commission denies Johnson Utilities' Motion for Summary Judgment in this
6 Complaint case, then the Commission will need to interpret and construe the terms of the
7 Agreement.¹¹ In such event, the names of those persons involved in the assignment of
8 that Agreement from Johnson Ranch Holdings, LLC, to SFG who may have information
9 regarding the Agreement or the assignment are directly relevant, or at a minimum, may
10 lead to relevant evidence.

11 Additionally, SFG's objection that the names of persons involved in the
12 assignment of an agreement is somehow confidential or proprietary is without any merit.
13 There is no confidentiality provision in the Agreement, and in fact, SFG attached the
14 Agreement to its Amended Formal Complaint filed in the public docket. Likewise, the
15 names of persons involved in an assignment of an agreement is not "proprietary"
16 information.

17 *JU 2.39 Is it the position of Swing First Golf, LLC, that the Agreement*
18 *Regarding Utility Service dated September 17, 1999, is a special*
19 *contract between Johnson Utilities and Swing First Golf, LLC?*

20 SFG objected to this data request stating that "[w]ithout a definition of 'special
21 contract,' the question is vague and calls for speculation." However, in a pleading that
22 SFG recently filed in the Johnson Utilities rate case, SFG stated that its regulatory
23 attorney "has practiced for 26 years, and before five state commissions and the Federal
24 Energy Regulatory Commission."¹² The term "special contract" is well known and

25 ¹¹ Johnson Utilities has argued in its Motion for Summary Judgment filed December 4, 2008, that the
26 interpretation and construction of contracts is beyond the scope of the Commission's jurisdiction.
Johnson Utilities does not waive this jurisdictional argument.

¹² Reply to Johnson Utilities' Response to Motion to Compel, Docket No. WS-02987A-08-00180,
December 5, 2008, page 1.

commonly used at the Commission and is neither vague nor does it call for any speculation. The data request is clear and directly on point as it goes to the relevance of the Agreement in this Complaint. Moreover, the data request can be answered with a simple yes or no. SFG should be required to answer this data request.

IV. CONCLUSION.

Johnson Utilities has clearly demonstrated that the objections it raised to the SFG data requests are meritorious and asserted in good faith. Accordingly, SFG's Motion to Compel should be denied. With respect to Johnson Utilities' Cross Motion to Compel, the Company has demonstrated that SFG's objections are baseless and that SFG should be ordered to answer the data requests.

RESPECTFULLY submitted this 13th February, 2009.

SNELL & WILMER

By:


Jeffrey W. Crockett

Bradley S. Carroll

400 East Van Buren

One Arizona Center

Phoenix, Arizona 85004-2202

Attorneys for Johnson Utilities, LLC

ORIGINAL and thirteen (13) copies of the foregoing
filed this 13th day of February, 2009, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007-1104

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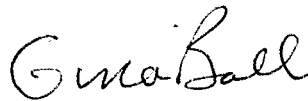
Yvette B. Kinsey, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

1 Ernest Johnson, Director
Utilities Division
2 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
3 Phoenix, Arizona 85007

4 Robin Mitchell, Staff Attorney
Legal Division
5 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPY of the foregoing sent via U.S. Mail and
E-Mail this 13th day of February, 2009, to:

8 Craig A. Marks
9 Craig A. Marks, PLC
10645 N. Tatum Blvd., Suite 200-676
10 Phoenix, Arizona 85028
Craig.Marks@azbar.org
11 Attorney for Swing First Golf LLC

12
13 

14 9499177.2